

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

4200 Wilson Blvd Stop 7100  
Arlington VA 20598-7100  
Staff Symbol: Ca  
Toll-Free: 1-800-280-7118  
Fax: 703-872-6113  
Email: ARL-PF-  
NPFCCCLAIMSINFO@uscg.mil

5890  
February 4, 2014

Sent via Email:

Cleveland Metroparks  
ATTN: Jared Magyar  
4101 Fulton Parkway  
Cleveland, OH 44111

RE: 914015-0001

Dear Mr. Magyar:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$6,127.79 is full compensation for OPA claim number 914015-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

To accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at [www.SAM.gov](http://www.SAM.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,



Claims Manager  
U.S. Coast Guard

Enclosures: Claim Summary / Determination  
Acceptance / Release Agreement

## ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 914015-0001

Claimant Name: Cleveland Metroparks

I, the undersigned, ACCEPT this settlement offer of \$6,127.79 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

\_\_\_\_\_  
Title of Person Signing

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Printed Name of Claimant or Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Witness

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Printed Name of Witness

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Signature

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Payee

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Bank Routing Number

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Bank Account Number

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	914015-0001
<b>Claimant:</b>	Cleveland Metroparks
<b>Type of Claimant:</b>	Corporate (U.S.)
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	Dawn Unglesbee
<b>Amount Requested:</b>	\$6,127.79

### **Facts:**

On November 10, 2013, Marine Safety Unit Cleveland responded to a report of a partially sunken 22' pleasure craft (Sea Ray) which took on water and sank, at the dock, at the East 55<sup>th</sup> Street Marina in Cleveland, Ohio. The MST1 observed a rainbow to light blue sheen approximately 10 feet by 10 feet in size, emanating from the submerged aft section of the sunken pleasure (OH 2784 TD). This sheen was impacting Lake Erie, a navigable waterway of the United States.<sup>1</sup>

The boat owner is Mr. Kenneth Thompson whom is deceased. Numerous attempts to contact a family member were met with negative results.<sup>2</sup> At this point MST1 Jesse Alling, USCG MSU Cleveland, worked with the Harbor Division for Cleveland Metroparks (CMP) to remove the submerged vessel as winter was approaching and the body of water would most likely freeze over. MST1 explains in his email to the NPFC,<sup>3</sup> that the most effective way to mitigate the discharge would be to remove the vessel from the marina.

The Senior Park Manager of Cleveland Metroparks, Mr. Jared Magyar, (Claimant), hired Inland Waters of Ohio, Inc for oil removal operations and Cleveland Marine Towing, Inc. for the salvage operation.

### **Claim:**

On January 6, 2014, Cleveland Metroparks submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated costs in the amount of \$6,127.79 for the Inland Waters of Ohio, Inc. invoice in the amount of \$2,497.79<sup>4</sup> and the Cleveland Marine Towing invoice for \$3,630.00.<sup>5</sup>

It is important to note that the Claimant is neither a responder nor a salvor which makes the Claimant a 'Good Samaritan' for handling the response actions.

The review of this claim focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these

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<sup>1</sup> USCG, MSU Cleveland Investigator Statement, signed by MST1 Peter Jennings, USCG.

<sup>2</sup> Ohio Uniform Incident Report.

<sup>3</sup> Email from MST1 Alling to Dawn Unglesbee, NPFC, Claims Manager.

<sup>4</sup> Inland Invoice # 23345.

<sup>5</sup> See, Cleveland Marine Towing Standard Form Salvage Agreement, signed and dated November 10, 2013.

actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

**APPLICABLE LAW:**

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

### **DETERMINATION OF LOSS:**

#### **A. Overview:**

1. FOSC coordination was provided by MSU Cleveland
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

#### **B. Analysis:**

Claimant is not in the business of spill response or oil removal. The Claimant incurred these costs while mitigating the effects of oil pollution that would have impacted Lake Erie, a navigable waterway of the United States.

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed.<sup>6</sup> The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC performed a review of the costs presented and has determined that the rates charged were in accordance with the established rate schedule and that the actions taken by all parties responding to the incident were determined by the USCG to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$ \$6,127.79 of uncompensated removal costs and that the amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim 914015-0001.

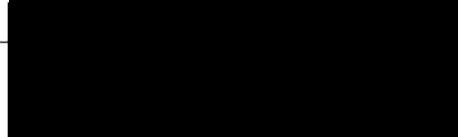
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<sup>6</sup> See proof of payment, check # 228033 to Cleveland Marine Towing in the amount of \$3,630.00 and check # 228069 to Inland waters of Ohio Inc in the amount of \$9,134.92 (this total is inclusive of many other invoices that do not pertain to this claim).

***C. Determined Amount:***

The NPFC determines that the OSLTF will pay \$6,127.79 as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim # 914015-0001. All costs claimed are for charges paid for by Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by Claimant.

Claim Supervisor:



Date of Supervisor's review: ***2/4/14***

Supervisor Action: ***Approved***

Supervisor's Comments: